UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/510,782	02/23/2000	Michael Krysiak		3795

7590 10/30/2002

Ohilip M Weiss
Weiss & Weiss
500 Old Country Road Suite 305
Garden City, NY 11530

EXAMINER
NGUYEN, SON T

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 10/30/2002

12/16/2

Please find below and/or attached an Office communication concerning this application or proceeding.

15

Office Action Summary	Application No. 09/510,782	Applicant(s) KRYSIAK ET AL.	
	Examiner Son T. Nguyen	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 August 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. **Claims 1,4-6,8,9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Spittle (US 5,916,027) in view of Morgan (US 6,029,395) and Thomas (US 4,067,140).

For claims 1 & 4, Spittle discloses a granulation method (col. 3, lines 28-30) for creating mulch comprising the steps of adding paper fibers to a mixer (col. 2, line 50 and col. 3, lines 6-13); adding NPK fortifiers before the mixer (col. 2, line 53 and col. 3, lines 16-17); mixing the paper fibers and NPK into a mixture and spraying a fine mist as the mixture is agitated (col. 3, lines 18-22); and drying contents of the mixer (see col. 3, lines 18-30). However, Spittle is silent about using a pin mixer which performs the step of mixing/tumbling, and a binding agent. Thomas teaches mulch and process of making the same in which he employs a drum granulator (rotating drum) to mix and tumble the ingredients in the composition together (col. 1, lines 30-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a drum granulator (rotating drum) as taught by Thomas to mix the ingredients in the mulch of Spittle to assure uniform blend of the ingredient in the mulch. Thomas doesn't indicate that his rotating drum is a pin mixer. However, it would have been an obvious

substitution of functional equivalent to substitute the rotating drum of Spittle as modified by Thomas with a pin mixer as claimed by applicants, since it would perform the same function recited by the applicants; i.e. to perform the steps of mixing and tumbling ingredients in a mulch so as to produce a uniform mulch composition. Morgan teaches a mulch making method in which he employs a binding agent in his mulch mix to hold other elements, such as paper fibers and granules, in the mix together. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a binding agent as taught by Morgan in the mulch mix of Spittle to hold elements in the mix together.

For claim 5, Spittle as modified by Thomas and Morgan are silent about employing a pin mixer having a double helix pin arrangement. In addition to the functional equivalent statement in the above, it would have been an obvious matter of choice to one having ordinary skill in the art at the time the invention was made to use any type of pin mixer such as one with a double helix pin arrangement to mix the mulch of Spittle as modified by Thomas and Morgan, depending on cost and how well one wishes to blend the mulch mixture together for his/her intended use.

For claim 6, Spittle as modified by Thomas and Morgan (emphasis on Spittle) further discloses the paper fibers comprises a by-product of a paper making process (col. 3, lines 6-14).

For claim 8, Spittle as modified by Thomas and Morgan discloses a granulated mulch product made by mixing and tumbling operation as stated in the above.

For claim 9, Spittle as modified by Thomas and Morgan (emphasis on Spittle) further discloses the step of performing a size reduction operation on the paper fibers prior to adding the fibers to the mixer (col. 3, lines 6-15).

3. **Claim 2** is rejected under 35 U.S.C. 103(a) as being unpatentable over Spittle as modified by Thomas and Morgan as applied to claim 1 above, and further in view of Moore (US 5,266,097). Spittle as modified by Thomas and Morgan is silent about employing a pan pelletizer in place of the pin mixer. Moore teaches a fertilizer method and composition which he mixes the ingredients in the composition in a pan mixer until the composition formed into a spherical granules (see example 1). It would have been an obvious matter of choice to one having ordinary skill in the art at the time the invention was made to employ any type of known mixer such as a pan mixer to make pellets/granules as taught by Moore to mix the mulch of Spittle as modified by Thomas and Morgan, depending on cost factor and how well one wishes to blend the mulch mixture together for his/her intended use.

4. **Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over Spittle as modified by Thomas and Morgan as applied to claim 1 above, and further in view of Clendinning et al. (US 3,901,838). Spittle as modified by Thomas and Morgan is silent about employing a paddle mixer in place of the pin mixer. Clendinning et al. teach a mulch film method and composition in which they employ a paddle mixer to mix the ingredients in the composition together (col. 13, lines 29-34). It would have been an obvious matter of choice to one having ordinary skill in the art at the time the invention was made to employ any type of known mixer such as a paddle mixer as taught by

Clendinning et al. to mix the mulch of Spittle as modified by Thomas and Morgan, depending on cost factor and how well one wishes to blend the mulch mixture together for his/her intended use.

5. **Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over Spittle as modified by Thomas and Morgan as applied to claim 1 above, and further in view of Decker (US 5,806,445). Spittle as modified by Thomas and Morgan are silent about using sewage sludge in place of the paper fibers. Decker teaches in col. 2, lines 10-13, that sewage sludge is proven to be a very effective mulch media because it is plentiful, inexpensive, easy to handle and rich in nutrients. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute sewage sludge as taught by Decker for the paper fibers of Spittle as modified by Morgan in order to reduce cost and ease of handling and still produce an effective mulch.

Response to Arguments

6. Applicants' arguments filed 8/20/02 have been fully considered but they are not persuasive. The declaration of Mr. Lee Hoffman has been acknowledged by the examiner.

Applicantss argued that the process described in the Spittle patent from col. 3, lines 6-30 is a pressure agglomeration technique and not an agitation process as claimed by applicantss. Upon repeated readings of col. 3, lines 6-30, of Spittle, the examiner cannot draw to a conclusion that Spittle teaches making the mulch by a pressure process as explained by Mr. Hoffman and applicants. Even in Mr. Hoffman's declaration, he acknowledges that Spittle does not entirely outlined in the

patent that Spittle's process is that of a pressure process; therefore, to interpret that Spittle clearly teaches a pressure process while acknowledging that Spittle doesn't entirely teaches the process is merely an allegation by applicants. Perhaps applicants should provide a declaration of Kevin Spittle to further convince the examiner that, indeed, the process described by Spittle in col. 3, lines 6-30, is a pressure process and not any other process(es), and further incorporate detail steps of the agitation process to distinguish the present invention from the prior arts. Otherwise, the examiner believes that Spittle teaches the steps as claimed by applicants such as adding paper fibers to some kind of a mixer (col. 3, line 21, where Spittle explained the mixture is being agitated); adding NPK fortifiers before or at the mixer (col. 2, line 53 & col. 3, lines 18-30); mixing and tumbling (Spittle teaches agitating the mixture in col. 3, line 22 and applicants explained agitation is defined by tumbling, page 2, 3rd paragraph of the amendment) the paper fibers and fortifiers in the mixer to create a mixture (col. 3, lines 18-22); and drying contents of the mixer (col. 3, lines 18-30). Spittle is silent about a pin mixer and a binding agent, which Morgan and Thomas have provided the teachings for (see the rejection above).

Applicants argued that Spittle process as defined is a multi-step process and not a single step tumble process that utilizes a high speed mixer to form granules as in the present invention. The claim language of applicants do not indicate that the present invention is just one step because the language states "comprising". Since this language doesn't indicate only one step, it doesn't matter if

Spittle teaches more than one steps as long as Spittle teaches the steps that are in applicants' method.

Applicants argued that there is nothing taught or disclosed in Spittle which states a binding agent as taught in Morgan would be obvious to add. Further, there is no reason that a binding agent would even be useful to the mulch of Spittle since Spittle uses pressure to form and keep the mulch together. As discussed in the above, the interpretation of Spittle teaching pressure process is merely an allegation. Spittle teaches paper fibers mixed with other ingredients to form the mixture into pellets and Morgan teaches a mulch comprising paper fibers, other granules, and a binding agent to bind the fibers and granules together. Therefore, it would have been obvious to one of ordinary skill in the art to combine Spittle with Morgan for a teaching of a binding agent to bind or hold the ingredients in the mulch together.

Applicants argued that nowhere does Spittle at col. 3, lines 6-14 described paper fibers comprised of a by product of a papermaking process. Applicants never defined in the specification what this by product is and it appears that the only "product" from a papermaking process is that of the paper fibers described in the specification. Therefore, the examiner is considering shredded newspaper as taught by Spittle in col. 3, lines 6-14, as a by-product of the papermaking process, the newspaper produce from the papermaking process.

Applicants argu d that Spittl would not use a pin mix r, a pan pell tiz r, a paddle mix r, a drum granulator, or a double helix pin arrang ment becaus

Spittle's process is that of a pr ssure process and not an agitation process. See the above paragraphs for explanation regarding the pressure/agitation process. As for the different types of mixer, see the rejection above.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Son T. Nguyen
Patent Examiner, GAU 3643
October 28, 2002

PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600